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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,712

12/31/2003

James T. Nielsen

149

1367

33109 7590 03/20/2007  
CARDICA, INC.  
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EXAMINER

ANDERSEN, MICHAEL T

ART UNIT

PAPER NUMBER

3734

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/750,712

Applicant(s)

NIELSEN ET AL.

Examiner

M. Thomas Andersen

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/14/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Acknowledgement is made of the response filed 12/14/2006, to the non-final Office action dated 9/26/2006.

#### ***Response to Arguments***

Applicant's arguments filed 12/14/2006 have been fully considered and they are persuasive. New rejections in view of new art follow:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barak, U.S. 4,930,674.

Claims 1, 30: Barak discloses a surgical method for manipulating a graft vessel relative to a target vessel comprising providing a staple holder having spaced apart arms 82, a graft affixer 85 projecting therefrom, and a plurality of discrete connectors held by the staple holder, and each arm independently holds at least one staple. A distal end of the graft vessel is placed between the spaced apart arms and the graft vessel is engaged with the graft affixer 85. See e.g. figure 3E.

Barak does not disclose forming a longitudinal incision in a wall of the graft vessel, but rather only in the target vessel. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to form one or more longitudinal incisions in the graft

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vessel in order to more easily evert the ends of the graft vessel onto the graft affixer 85. Even if the longitudinal incision was only slight, it would aid in attaching the graft vessel to the graft affixer because the distal end would become slightly more dilated.

Claim 2: the graft vessel is pushed down onto the graft affixer 85. Fig. 3B.

Claim 3: The engaging is performed at a heel of the graft vessel. Id.

Claim 4: Engaging includes everting the end of the graft vessel. Id.

Claims 5-6, 10: Barak does not disclose penetrating a wall of the graft vessel at least partially with the graft affixer. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to penetrate the end of the graft vessel with some form of a spike or hook member in order to better hold the graft vessel thereon.

Claim 7: Engaging includes clipping a portion of the graft vessel with the graft affixer. Id.

Claims 8-9: The anvil ports can be considered indicia that the graft vessel is placed over; and the graft vessel is angled relative to the staple holder. Fig 3C.

Claim 11: The graft vessel is then affixed to target vessel. Fig. 3D.

Claims 12-13: Affixing is performed by ejecting a plurality of staples through the flap of the graft vessel and into the wall of the target vessel.

Claim 31: The arms are fixed relative to one another when the graft is placed on and engaged by the graft affixer. Fig. 6A.

Claim 32: The graft affixer remains connected to the staple holder after affixing the graft vessel to the target vessel. Id.

Claim 33: The graft affixer is detachable from the staple holder. Cf. Figs. 1 & 3C.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Thomas Andersen whose telephone number is (571) 272-8024. The examiner can normally be reached on M-F 8AM-4:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Thomas Andersen

March 6, 2007

A handwritten signature in black ink, appearing to read "M J Hayes", with a long horizontal stroke extending to the right.

MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER